IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.107 OF 1988

1. Sukhdeo Bhoji Kalel,)
2. Hirabai Shamrao Kengar)
Both Agriculturist,)
Resident of Jambhulani,)
Taluka Man, Dist.Satara.).. **Appellants.**

v/s.

1. Jagu Jyoti Dhembre,)
2. Ramu Jyoti Dhembre, since)
deceased by his L.Rs.)
2A.Suman Rama Dhembre,)
2B.Maruti Rama Dhembre,)
2C.Vijabai Rma Dhembre.)
3. Laxman Jyoti Dhembre,)
All residents of Jkambhulani)
Taluka Man, Dist.Satara.).. **Respondents.**

Shri R.A.Thorat, Advocate for Appellants.

Shri A.V.Anturkar, Advocate for Respondent No.1,2A to 2C and 3.

CORAM: A.S.OKA, J.

DATE : 3rd August, 2004.

ORAL JUDGMENT :-

1. On 10th March, 1988, this Court admitted the Second Appeal by passing following Order :

"Whether the Courts below have perversely come to the finding that there was no error in the sale

deed of 2nd September, 1958 purporting to effect sale of 2A 18 G of land for Rs.600/- when a year earlier 19G of the same pot hissa were sold for Rs.800/- is a substantial question of law. Admit."

I have heard the Counsel appearing for the parties on the aforesaid substantial question of law.

2. The Appeal is by the Original Defendants. The Respondents are the Original Plaintiffs. The subject matter of the suit is property bearing R. Survey No. 99/6A admeasuring 2 Acres and 18 Gunthas situated at village Jambhulani, Taluka Man of Satara District. The said land (hereinafter referred to as "the Suit Property") was sold by one Maruti Kalel to the Respondents by a Sale Deed dated 2nd September, 1958 for consideration of Rs.600/-. Prior to the said Sale Deed, the said Maruti Jagu Kalel sold area of 19 Gunthas on the northern side of land bearing survey No.99/6A to the Respondents under Registered Sale Deed dated 23rd February, 1957 for a consideration of Rs.800/-. The said portion was subsequently numbered as Rev. Survey No.99/6B. The Respondents claimed to be owners of the suit property on the basis of the said

sale deed dated 2nd September, 1958. The case of the Respondents is that sometime in 1972 the Appellants dispossessed them and therefore a suit for possession was filed.

3. The suit was resisted by Appellant No.2 by filing Written Statement. The contention of the Appellant No.2 in the Written Statement is that the suit property is not correctly described in the plaint. A case is made out by the Appellant No.2 that the suit property was never sold to the Respondents by the said Maruti under the Sale deed dated 2nd September, 1958 and the Respondents were not put in possession of the suit property. A specific case made out is that the said Maruti sold only 2 Annas and 8 Paise share in the land bearing R.Survey No.99 to the Respondents. It is submitted that area of 99/6A is wrongly described as 2 acres 18 Gunthas and it is only 2 acres and 7 gunthas. It is submitted that the land which was not sold by Maruti to the Respondents was sold to the Appellants No.1 by Maruti by a Registered Sale Deed and the Appellant No.1 in turn sold the said land to Appellant No.2 by Sale Deed dated 16th November, 1973.

4. The Trial Court decreed the suit. The Appeal

preferred by the Appellants herein in the District Court has been dismissed. The learned Counsel appearing for the Appellants submitted that the first Sale Deed which is executed by Maruti on 23rd February, 1957 was in respect of the area of 19 Gunthas out of the same survey number and the consideration shown in the Sale deed was Rs.800/- whereas in the Sale deed executed on 2nd September, 1958, consideration was shown as Rs.600/- for the area of 2 acres and 18 gunthas. He submitted that Maruti could not have sold large area of 2 Acres and 18 gunthas only for a consideration of Rs.600/- when earlier, a smaller portion of the same property having area 19 gunthas was sold for a consideration of Rs.800/-. He, therefore, submitted that the area of 2 Acres and 18 gunthas mentioned in Sale Deed dated 2nd September, 1958 was incorrect and in fact lesser area was sold by Maruti to the Respondents. The learned Counsel appearing for the Respondents submitted that the substantial question of law framed in the Second Appeal is not at all a substantial question of law within the meaning of Section 100 of the Code of Civil Procedure, 1908 and at the time of final hearing of the Second Appeal, he is entitled to submit that the question which is framed as the substantial question of law is not a substantial

question of law. He submitted that the said question was not specifically raised before the Courts below.

5. I have considered the rival submissions. There is some substance in the contentions raised by the Counsel appearing for the Respondents that the question which is agitated in the Second Appeal was not specifically raised before the Courts below. Merely because in the subsequent Sale deed, a lesser price is paid for a bigger area, it cannot be said that the circumstance is by itself sufficient to come to the conclusion that the area of the property sold under the subsequent Sale deed is not correctly mentioned therein and in fact a smaller area must have been sold under the said Sale deed. It was necessary for the Appellants to raise the said issue specifically so that the Plaintiffs/Respondents could have led evidence to show as to how market value of the properties which were sold under the different Sale deeds was different.

6. It is to be noted here that after considering oral and documentary evidence on record, the Courts below have held that the Respondents have established their title to the suit property as described in the plaint on the basis of the Sale deed. There is nothing

brought on record to show that the actual area sold under the Sale Deed dated 2nd September, 1958 is lesser than the area mentioned in the said Sale deed.

7. Merely because the rate at which two portions of lands sold under the two separate Sale Deeds is different is no ground by itself to say that the Respondents did not purchase entire area mentioned in the Sale Deed. It cannot be said that the Judgments of the Courts below are perverse. When the the findings recorded are based on evidence on record and when all admissible evidence is considered by the Courts below, it cannot be said that the findings are perverse. It is not the case here that the conclusions which are arrived at by the Courts below are not possible conclusions. The said conclusions can be drawn on the basis of evidence on record.

8. In the circumstances, there is no merit in the Second Appeal and the same is dismissed with no order as to costs.

JUDGE.

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SECOND APPEAL NO.107 OF 1988.

DATE OF DECISION : 3RD AUGUST, 2004.

FOR APPROVAL AND SIGNATURE OF

THE HON'BLE SHRI JUSTICE A.S.OKA.

1. Whether Reporters of Local Papers may be allowed to see the Judgement ?

2. Whether to be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the Judgement ?

4. Whether this case involves a substantial question of law as to interpretation of the Constitution of India 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad & Goa Offices ?

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